

Other party to the proceedings: Simões Dos Santos (Alicante, Spain) (represented by: A. Creus Carreras, lawyer)

Re:

Appeal against the judgment of the Civil Service Tribunal of the European Union (First Chamber) of 5 May 2009 in Case F-27/08 *Simões Dos Santos v OHIM*, not published in the ECR, seeking to have that judgment set aside.

Operative part of the judgment

The Court:

1. Paragraphs 2 to 25 of the operative part of the judgment of the Civil Service Tribunal of the European Union (First Chamber) of 5 May 2009 in Case F-27/08 *Simões Dos Santos v OHIM* are annulled.
2. The main appeal and the cross appeal are dismissed as to the remainder.
3. The case is referred back to the Civil Service Tribunal.
4. The costs are reserved.

(¹) OJ C 220, 12.9.2009.

Judgment of the General Court of 12 November 2010 — Deutsche Bahn v OHIM (Horizontal combination of the colours grey and red)

(Case T-404/09) (¹)

(Community trade mark — Application for Community trade mark consisting in a horizontal combination of the colours grey and red — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009)

(2011/C 13/48)

Language of the case: German

Parties

Applicant: Deutsche Bahn AG (Berlin, Germany) (represented by: U. Hildebrandt, K. Schmidt-Hern and B. Weichhaus, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: G. Schneider, Agent)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 23 July 2009 (Case R 379/2009-1) concerning an application for registration of a colour sign, consisting in the combination of the colours grey and red, as a Community trade mark.

Operative part of the judgment

The Court:

1. Dismisses the action.

2. Orders Deutsche Bahn AG to pay the costs.

(¹) OJ C 297, 5.12.2009.

Judgment of the General Court of 12 November 2010 — Deutsche Bahn v OHIM (Vertical combination of the colours grey and red)

(Case T-405/09) (¹)

(Community trade mark — Application for Community trade mark consisting in a vertical combination of the colours grey and red — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009)

(2011/C 13/49)

Language of the case: German

Parties

Applicant: Deutsche Bahn AG (Berlin, Germany) (represented by: U. Hildebrandt, K. Schmidt-Hern and B. Weichhaus, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: G. Schneider, Agent)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 23 July 2009 (Case R 372/2009-1) concerning an application for registration of a colour sign, consisting in the combination of the colours grey and red, as a Community trade mark.

Operative part of the judgment

The Court:

1. Dismisses the action.
2. Orders Deutsche Bahn AG to pay the costs.

(¹) OJ C 297, 5.12.2009.

Order of the General Court of 17 November 2010 — Victoria Sánchez v Parliament and Commission

(Case T-61/10) (¹)

(Action for failure to act — Failure to adopt measures — Application for directions to be issued — Request for protective measures — Action in part manifestly inadmissible and in part manifestly devoid of any basis in law)

(2011/C 13/50)

Language of the case: Spanish

Parties

Applicant: Fernando Marcelino Victoria Sánchez (Seville, Spain) (represented by: initially, N. Domínguez Varela and, subsequently, P. Suarez Plácido, lawyers)

Defendants: European Parliament (represented by: N. Lorenz, N Görlitz, P. López-Carceller, agents) and European Commission (represented by: L. Lozano Palacios and I. Martinez del Peral, agents)

Re:

Application for a declaration of failure to act on the part of the European Parliament and the European Commission in that those institutions unlawfully failed to respond to the applicant's letter of 6 October 2009, an application for directions to be issued and a request for protective measures.

Operative part of the order

1. *The action is dismissed.*
2. *Mr Fernando Marcelino Victoria Sánchez is ordered to pay the costs.*
3. *There is no need to adjudicate on the application for leave to intervene of Mr. Ignacio Ruipérez Aguirre and the ACT Petition Association.*

⁽¹⁾ OJ C 100, 17.4.2010, p. 58.

Action brought on 1 September 2010 — Maftah v Commission

(Case T-101/09)

(2011/C 13/51)

Language of the case: English

Parties

Applicant: Elmabruk Maftah (London, United Kingdom) (represented by: E. Grieves, Barrister, and A. McMurdie, Solicitor)

Defendant: European Commission

Form of order sought

- Annul Regulation (EC) No 1330/2008 ⁽¹⁾ insofar as it relates to the applicant;
- Order the defendant to immediately remove the applicant from the annex to the said regulation; and
- Order the defendant and/or the Council of the European Union to pay, in addition to its own costs, those incurred by the applicant and any sums advanced by way of legal aid by the cashier of the Court of Justice of the European Union.

Pleas in law and main arguments

By means of the present application, the applicant seeks, pursuant to Article 263 TFEU, the annulment of Commission Regulation (EC) No 1330/2008, insofar as the name of the applicant has been placed on the list of persons and entities to which certain restrictive measures were imposed.

In support of his action, the applicant submits the following pleas in law:

Firstly, the Commission has failed to independently review the basis of the applicant's inclusion in Annex I to Regulation (EC) No 881/2002 ⁽²⁾ at any point, or required any reasons or evidence for that inclusion.

In addition, the Commission has failed to provide to the applicant with any reasons at all and then failed to provide any adequate reasons justifying his inclusion in Annex I to Regulation (EC) No 881/2002 in breach of his right to an effective judicial remedy, the right to defend himself and in breach of his rights to property under the European Convention on Human Rights.

Finally, the continued inclusion in Annex I to Regulation (EC) No 881/2002 is irrational given that: (i) there were and are no reasons available which would satisfy the relevant criteria for inclusion in the said annex; (ii) the United Kingdom's government's position is that the applicant no longer fulfils the relevant criteria; and (iii) the judgments by a specialized UK Court that the Libyan Islamic Fighting Group has not merged with the Al-Qaida network and/or every person associated with the Libyan Islamic Fighting Group has an Al-Qaida violent global jihadist ideology.

⁽¹⁾ Commission Regulation (EC) No 1330/2008 of 22 December 2008 amending for the 103rd time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban (OJ 2008 L 345, p. 60).

⁽²⁾ Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan (OJ 2002 L 139, p. 9).

Action brought on 1 September 2010 — Elostá v Commission

(Case T-102/09)

(2011/C 13/52)

Language of the case: English

Parties

Applicant: Abdelrazag Elostá (Pinner, United Kingdom) (represented by: E. Grieves, Barrister, and A. McMurdie, Solicitor)

Defendant: European Commission

Form of order sought

- Annul Regulation (EC) No 1330/2008 ⁽¹⁾ insofar as it relates to the applicant;
- Order the defendant to immediately remove the applicant from the annex to the said regulation; and